

STATE OF MICHIGAN
COURT OF APPEALS

RICKY NEWELL and TONY MATHIS,

Plaintiffs-Appellants,

v

JOHN MARSHALL, WAYNE DONAWAY, and
RON VAN SUMEREN,

Defendants-Appellees.

UNPUBLISHED
November 1, 2002

No. 233742
Chippewa Circuit Court
LC No. 00-005029-CZ

Before: Hood, P.J., and Bandstra and O'Connell, JJ.

MEMORANDUM.

Plaintiffs appeal as of right from the trial court's order granting defendants' motion for summary disposition. We affirm.

Plaintiffs were employed by the prison newspaper when a package containing contraband was sent to the office while supervisor, defendant Wayne Donaway, was on leave. The intended recipient of the contraband could not be determined. Nonetheless, plaintiffs were terminated from their newspaper positions. When plaintiffs' attempt to be reinstated through the grievance procedure failed, this litigation was commenced.

As an initial matter, we note that dismissal was proper pursuant to MCL 600.5507(3)(b); 600.5531(a). Nonetheless, we will address the merits of plaintiffs' claim of appeal. The trial court properly granted summary disposition of the complaint because the state action at issue was not a type of atypical, significant deprivation in which the state created a liberty interest. *Thomas v Pogats*, 249 Mich App 718, 725; 644 NW2d 59 (2002). Furthermore, the representation of the defendants by the attorney general was proper. MCL 691.1408(1). While plaintiffs alleged that the complaint was based on individual acts, defendants only acquired authority to act over plaintiffs based on their positions. The gravamen of a plaintiff's action is determined by considering the entire claim, and a plaintiff may not avoid dismissal or immunity

protections by artful pleading. *Maiden v Rozwood*, 461 Mich 109, 135; 597 NW2d 817 (1999). Based on our resolution of the merits, we need not address the challenge to venue. *Fast Air, Inc v Knight*, 235 Mich App 541, 549-550; 599 NW2d 489 (1999); see also MCL 600.1645.

Affirmed.

/s/ Harold Hood
/s/ Richard A. Bandstra
/s/ Peter D. O'Connell